

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

PHILCARLO D'MARCONE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-06-142-F
)	
CORRECTIONS CORPORATION OF AMERICA, et al.,)	
)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiffs, prisoners appearing pro se, have filed this action pursuant to 42 U.S.C. § 1983, alleging a violations of their constitutional rights. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the matter be dismissed without prejudice.

By order of this Court dated April 5, 2006, Plaintiff D'Marcone was ordered to pay an initial partial filing fee in the amount of \$33.00 and Plaintiff Jacobs was ordered to pay an initial partial filing fee of \$22.80 on or before April 25, 2006, in accordance with the provisions of 28 U.S.C. § 1915(b). Plaintiffs were advised that failure to pay the initial partial filing fee or to show cause in writing for their failure to pay could result in dismissal of this action without prejudice to refiling.

Further, Plaintiff Jacobs was also *sua sponte* granted an extension of time until April 25, 2006 within which to file an amended signed complaint as previously ordered on March 6, 2006.

A review of the court file reveals that Plaintiffs have not paid their initial partial filing fees, requested an extension of time within which to pay, or demonstrated good cause for their failure to do so. Further, Plaintiff Jacobs has not complied with the Court order and filed an amended signed complaint. Thus, Plaintiffs' claims are subject to dismissal without prejudice to refiling. Local Civil Rule 3.4(b); *Lucky v. Hargett*, No. 97-6161, 1997 WL 603780 (10th Cir. Oct. 1, 1997) (upholding dismissal of Section 1983 claim for failure to pay initial partial filing fee); *Amen v. United States*, No. 96-5146, 1997 WL 158163 (10th Cir. April 1, 1997) (district court should have dismissed the complaint without prejudice when the plaintiff failed to pay the filing fee).¹

RECOMMENDATION

Accordingly, it is recommended that this matter be dismissed without prejudice to refiling. Plaintiffs are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by the 18th day of May, 2006, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir.

¹These unpublished dispositions are cited as persuasive authority pursuant to Tenth Circuit Rule 36.3.

1991). This Report and Recommendation disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 28th day of April, 2006.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE